

1 IN THE UNITED STATES DISTRICT COURT.  
2 FOR THE DISTRICT OF NEW JERSEY  
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,  
5 HOWARD HOLLANDER, THEODORE CASE,  
6 AND MICHAEL FINUCAN, individually  
7 and on behalf of all others  
8 similarly situated,  
9 Plaintiffs,

10 V.

VOLUME 5  
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,  
12 Defendant.

CAMDEN, NEW JERSEY  
JUNE 14, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS  
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD  
17 BY: NICOLE M. ACCHIONE, ESQ.  
18 AND: LISA J. RODRIGUEZ, ESQ.  
19 AND  
20 GREEN JACOBSON, P.C.  
21 BY: ALLEN PRESS, ESQ. (MO. BAR)  
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)  
23 For the Plaintiffs.

24 ARCHER GREINER  
25 BY: STEVEN FRAM, ESQ.  
AND  
KATZ & RANZMAN  
BY: DANIEL M. KATZ, ESQ.  
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBERG, ESQ.  
IN-HOUSE COUNSEL FOR ALPA.

1           Pursuant to Section 753 Title 28 United States  
2 Code, the following transcript is certified to be an  
3 accurate record as taken stenographically in the  
4 above-entitled proceedings.

5                           S/     LYNNE JOHNSON

6                           Lynne Johnson, CSR, CM, CRR  
7 Official Court Reporter  
8  
9

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1 THE COURT: Mr. Press, Mr. Fram, I just wanted to  
2 do one little detail before this morning. In the Wilder  
3 video, there was an objection by defendants to one small --  
4 well, not that small -- well, a pretty small snippet. It was  
5 line 158, 18, through line one 65, 9. I wanted to deal with  
6 that.

7 MR. PRESS: One of those issues you dealt with  
8 yesterday, I thought, Judge, Wilder's testimony that he  
9 thought it was a strategic decision on the part of ALPA.

10 THE COURT: Well, that is, I didn't know, because I  
11 was, I found it on my desk and I saw the objection. I just  
12 want to make sure that I am ruling, just -- that lines 158,  
13 18, through 158, 23 are okay. That is the deposition of  
14 August 8, 2008.

15 Those are the lines in which you he just reports  
16 that Captain Woerth vetoed the litigation strategy.

17 The part about what goes on afterwards, I am  
18 striking.

19 MR. KATZ: Thank you, your Honor.

20 MR. PRESS: Well --

21 THE COURT: You want to make an argument to the  
22 jury.

23 MR. PRESS: Mr. Wilder, he testified, he had a  
24 conversation with Clay Warner.

25 THE COURT: Yeah, but he says he has a conversation

1 with Clay Warner. It goes like this: I remember when you  
2 were told that Captain Woerth, the president, vetoed. Yes.  
3 Do you remember what your reaction was? My reaction? Well,  
4 I mean yes. I remember asking why. Do you know Mr. Clay  
5 Warner, the frustration, in his memo.

6 The words, whether he word was frustrated or not  
7 frustrated is not evidence.

8 It goes on, did that just increase your frustration  
9 level? I think I mean, what I did was call Clay Warner to  
10 ask, and Clay indicated that that was the decision. He  
11 wasn't certain precisely what the reason for it was.

12 But it was rather clear to me the decision had to  
13 do with the overall strategy of ALPA rather than the  
14 technicalities.

15 What, what does he mean it was clear to me?

16 MR. PRESS: This is a man that dealt with ALPA for  
17 30 years.

18 THE COURT: He dealt with them, he could have dealt  
19 with them for a hundred years. His subjective reaction to  
20 what was going on is not evidence. This has more strategic  
21 implications than tactical, or technical implications. And  
22 what the strategic way was not filing this lawsuit going to  
23 help the pilots, the TWA pilots, according to the ALPA  
24 people. I don't know. Nobody told me that.

25 Well, what nobody told him is not evidence. It is

1 really just testimony by the questioner.

2 I don't know, nobody told me. Okay, okay.

3 They just told me that this had to do with the  
4 overall -- this is a question, not testimony. They just told  
5 you that this has to do with the overall strategy? I am not  
6 trying to put words in your mouth. Of course that is what is  
7 being done.

8 But I am trying to understand your testimony.

9 Well, that was certainly my impression. It was not my  
10 impression that there was any disagreement over the merits of  
11 the proposed litigation itself. Well, he is trying to say it  
12 is clear that the litigation had merit.

13 Well, I don't know if it had merit or not. That is  
14 not evidence that it had merit. It had to do with the  
15 overall strategy pursued by ALPA in connection with the  
16 dispute. In other words, an issue that was being resolved  
17 above my pay grade. This was the presidential level. Okay.  
18 Because I think you testified before that it was your belief  
19 that Clay Warner was even surprised by their decision. Do  
20 you remember that?

21 You are putting words in his mouth. I didn't. I  
22 don't know what I said he was surprised. I said he didn't  
23 know the reason for it. But he confirmed that that was his  
24 decision. Well, I let that in earlier. I mean, that Clay  
25 reported the decision, I have no problem with.

1 But all this business about impression as to what  
2 he thinks, or his impression that it had nothing to do with  
3 the merits of the litigation, that is not evidence. It is  
4 not evidence that is admissible.

5 There has been testimony in this case -- here is a  
6 long question. And the funny thing is, there is never an  
7 answer. He just proffered the question. There has been some  
8 testimony in the case by MEC members that they were told by  
9 Captain Woerth as to why. And you don't have to accept this  
10 as any truth, but I just want to tell you what that testimony  
11 was, and have you comment on it.

12 And then there is no answer. It goes on. But  
13 asking him to list tone what other people say and then  
14 comment on what they say, it is not evidence. It is not  
15 facts in the case E okay. Here is my question. Assuming  
16 that Captain Woerth told the pilots one reason they were not  
17 file a lawsuit -- well, the reason is I don't sue other  
18 unions.

19 Again, you are just saying assuming that, the  
20 theoretical question.

21 MR. PRESS: There is evidence that statement was  
22 made.

23 THE COURT: That evidence can come in. But having  
24 you ask him to assume that is asking him an experts question,  
25 a theoretical question. And then you try to prove it is

1 untruthful by proving, you say, okay. I found at this point  
2 in time I can't recall any suit by ALPA against another  
3 organization. That was his first answer. Then he says,  
4 okay. I found one. And that is you talking. That is not,  
5 that is you testifying, not him. His answer is I don't  
6 remember any.

7 MR. PRESS: But I refreshed his his memory, Judge.

8 THE COURT: I found one. You said, okay. I found  
9 one. ALPA in connection with the United pilots effort to buy  
10 the airlines.

11 Number one, that lawsuit was a totally different  
12 context. I mean, that suit was a context that had, I mean,  
13 that is when the pilots of America -- not America, of United  
14 thought they could buy the airline and there was a big effort  
15 made, I don't know how big it was but there was an effort  
16 made that the pilots were going to buy the airline. That is  
17 a totally, that is, that is a suit that is a million years  
18 beyond what we are talking about in this case, a suit on  
19 behalf of your members to get a benefit for your members. Do  
20 you remember when that happened?

21 I do. ALPA sued IAM. That is you again  
22 testifying. You are refreshing recollection by, you are not  
23 refreshing recollection. You are telling him. Were you  
24 aware of that? Wilder: Yes, I am. Thank you. Okay.  
25 Having refreshed your memory with that one, can you think of

1 any others?

2 Then his answer was, with later disputes, I think  
3 he means after this one. That is it. And then I agreed. I  
4 think that is massively confusing to a jury. Bringing in two  
5 lawsuits that -- well, one you know nothing about. The suit  
6 against IAM, I don't know what it was. The one against  
7 United, I am a little familiar with from the newspapers, that  
8 was a different, a totally different context. And I find  
9 none of this evidential. I mean, to try to plant seed with  
10 the jury that are concedes with the jury that are confusing  
11 and that, I don't think, evidential. That is my ruling. You  
12 want to argue I will let you ruling.

13 MR. PRESS: I understand your ruling. You have  
14 read the testimony. I am confident I won't get you to change  
15 your mind so we understand your ruling. If we could have a  
16 few minutes to edit the video.

17 THE COURT: That is why I wanted to come out a few  
18 minutes early. Again, let me just for the record put, I am  
19 leaving in, the objection started at 158, 18. I am leaving  
20 in 158, 18, to 158, 23. I want them to be allowed to say we  
21 don't sue -- or know that he turned it down. And I am taking  
22 out one 59, 23, all the way through 165, 9. Page 165, line  
23 9.

24 MR. KATZ: Judge Irenas, while they are editing  
25 that tape from is one other issue with regard to Roland



1 Wilder's deposition video.

2 THE COURT: What is that?

3 MR. KATZ: We have counter designated about ten  
4 pages of his transcript, and the plaintiffs have declined to  
5 include those pages where with the video they are showing.  
6 We believe in all fairness that it is important for the jury  
7 to see now the parts of Wilder's deposition where I was  
8 asking him questions about the same subject matter that they  
9 examined him about. I have a copy --

10 THE COURT: Well, I am not going to allow it if it  
11 relates to the part that I have struck because that would be  
12 unfair.

13 MR. KATZ: No, it doesn't, your Honor. I will hand  
14 up to the Court.

15 THE COURT: I have the designations.

16 MR. KATZ: These are the additional parts. They  
17 are not in the transcript of what the plaintiffs plan to show  
18 because they left them out.

19 THE COURT: Was this in the -- where, was this in  
20 the final pretrial?

21 MR. KATZ: It was in the final pretrial order. It  
22 is only part of what we counter designated.

23 THE COURT: Have you seen it?

24 MR. PRESS: Yes, it is basically Katz's cross  
25 examination of Mr. Wilder.

1 MR. KATZ: He says in there things like, well, I  
2 will let the Court read what it says.

3 THE COURT: What is your position on that?

4 MR. PRESS: Your Honor, I understand that you are  
5 going to allow that at some point in the trial. If it comes  
6 in now we would, we had some redirect, I would ask that that  
7 be allowed as well.

8 MR. KATZ: We don't object to that.

9 THE COURT: I agree with you.

10 MR. PRESS: And Judge, I wanted an instruction from  
11 you, if you will allow it, to the jury before the cross is  
12 played that this is ALPA's evidence, not ours.

13 THE COURT: Well, no. You never say that. Any  
14 cross examination, I don't say this side or the other side is  
15 evidence.

16 MR. PRESS: They haven't heard from Mr. Katz yet.  
17 When they hear his voice they won't even know who he is.

18 THE COURT: Well, cross examination, you also, the  
19 cross examiner is always trying to bring his side of the case  
20 out. That is the nature of the trial.

21 MR. PRESS: Judge, I understand that. I just want  
22 to eliminate any potential confusion with the jury. Why are  
23 the plaintiffs putting on this evidence?

24 THE COURT: They are not putting on the evidence.  
25 It is cross examination.

1 MS. RODRIGUEZ: I think that is Press's point, just  
2 in the normal testimony there is a pause and then it is clear  
3 that the podium is then turned over to the other side for  
4 cross examination. So we just thought that there needed to  
5 be some designation within the --

6 THE COURT: I think you are probably right on that.

7 MR. KATZ: Stop the tape and announce that this is  
8 cross examination by ALPA's counsel.

9 THE COURT: I agree with you.

10 MS. RODRIGUEZ: That is all we are asking for.

11 THE COURT: Oh, I agree with that.

12 MR. PRESS: Okay.

13 THE COURT: But it is not him putting his evidence  
14 on. It is cross examination.

15 This cross doesn't appear to be related to the  
16 areas I struck.

17 MR. KATZ: No, your Honor.

18 THE COURT: That I wouldn't allow.

19 Okay. I will allow it.

20 MR. KATZ: Thank you, Judge.

21 THE COURT: With the caveat --

22 MR. KATZ: That we will tell them it is cross  
23 examination.

24 THE COURT: Yes, we will tell the jury it is cross  
25 examination, making sure they are not confused by some of the

1 other things in your case. I think it is proper.

2 MR. PRESS: Okay.

3 THE COURT: Now, you also had, there was another  
4 day, you had the August 11 -- not August. The 2011  
5 testimony.

6 MR. KATZ: They tacked that on to the tape. It is  
7 not going to show the transcript, it will show the live  
8 video.

9 MS. ACCHIONE: It will show the live video. We  
10 don't have the ability to sync up the exhibits.

11 MR. FRAM: That is fine as long the exhibits go  
12 into evidence.

13 MS. ACCHIONE: We don't have objection.

14 THE COURT: Apparently Mr. Press is going to  
15 deliver a bunch of exhibits.

16 MR. PRESS: Yes.

17 THE COURT: And they were agreed to, I gather.

18 MR. PRESS: Yes.

19 MR. FRAM: I hope he has cones of ours. I gave  
20 them one copy. Do you have a second copy?

21 MR. PRESS: I don't have yours.

22 MS. ACCHIONE: I have them.

23 THE COURT: Read me the numbers.

24 MR. PRESS: P 117. J 118.

25 THE COURT: P 117.

1 MR. PRESS: I have a list like you asked me to  
2 provide. Would you rather have it done that way?

3 THE COURT: I want to make sure I have them.

4 MR. PRESS: Here is yours.

5 THE COURT: Okay.

6 THE COURT: Let me read them for the record. Then  
7 I am admitting them in evidence. P 117. J 118, P 120. P  
8 121. P 123. J 124. J 125. P 126. J 127. P 128. P 129.  
9 J 130. P 131. P 133. P 134. And J 135. They are all  
10 without objection in evidence.

11 MR. FRAM: Two other ones that counsel put up on  
12 the bench, your Honor, the ones that --

13 THE COURT: Tell me what they are.

14 MR. FRAM: D 176.

15 THE COURT: These will be on cross.

16 MR. FRAM: These are the supplemental deposition,  
17 your Honor.

18 THE COURT: It is really cross, it --

19 MR. FRAM: Yes, that is fair. D what.

20 MR. FRAM: D 176, and D 236.

21 THE COURT: 236?

22 MR. FRAM: Yes, your Honor.

23 THE COURT: Mr. Press, any objection to those?

24 MR. PRESS: No, your Honor.

25 THE COURT: Okay. D 176, and 236 are in evidence.

1 MR. FRAM: Thank you, your Honor.

2 MR. KATZ: Judge Irenas, I wanted to give the Court  
3 a warning shot on one other.

4 THE COURT: A what?

5 MR. KATZ: A warning shot.

6 THE COURT: You are shooting at me?

7 MR. KATZ: No, another direction.

8 THE COURT: Why would you shoot at me?

9 MR. KATZ: Because, a heads-up.

10 THE COURT: Oh, a heads up.

11 MR. KATZ: There is coming soon.

12 THE COURT: Something over the bow.

13 MR. KATZ: The plaintiffs have told us yesterday  
14 they plan to show tomorrow a deposition videos for Tom  
15 Ratsberg, Duane Woerth, John Clark and J Randolph Babbitt.  
16 We have objections and counter designations. We will deliver  
17 to the Court during the day.

18 THE COURT: To all of them?

19 MR. KATZ: To all of them. And we have been unable  
20 to resolve them by discussion with the plaintiffs. We will  
21 have during the day a transcript of the portion --

22 THE COURT: So do you have objections to part of  
23 them?

24 MR. KATZ: To part of them, yes. Just the  
25 designated lines, pages and lines, and we will mark a

1 transcript of what they plan to show, and provide a  
2 transcript of any counter designations that we wish to show  
3 in addition to those four people.

4 THE COURT: Mr. Press, will you let us know the  
5 order in which they are being played so I can attack the  
6 problem in order.

7 MR. PRESS: Yes.

8 THE COURT: So I don't take the one that is last  
9 and it turns out I am missing the first.

10 MR. PRESS: Yes, I am I will do that.

11 THE COURT: That is tomorrow.

12 MR. KATZ: That is what the plaintiffs said.

13 THE COURT: That means Baehler --

14 MS. RODRIGUEZ: Baehler has been moved to Thursday.

15 THE COURT: Originally, he --

16 MS. RODRIGUEZ: He was originally scheduled for  
17 tomorrow.

18 THE COURT: He is now at the back end of that list.

19 MS. RODRIGUEZ: Yes.

20 THE COURT: , at some point today give me the list  
21 of the order and the materials I am going to receive, and I  
22 will deal with them.

23 MR. FRAM: Your Honor, may I inquire of counsel, is  
24 there going to be a live witness tomorrow?

25 MR. PRESS: Yes. At least one. John Clark and

1 maybe Matt Comlish.

2 MR. FRAM: Thank you.

3 THE COURT: Okay. Can, are we ready to go?

4 MR. PRESS: Yes. Gentlemen? We will be reading  
5 the brief Schneider excerpts after Wilder. We can talk  
6 about that during the break.

7 THE COURT: All right. Let's get Mr. Wilder going.  
8 There is a lot of transcript left. A lot.

9 MR. PRESS: Yes.

10 MR. FRAM: Couple hours.

11 THE COURT: I think at least a couple of hours.

12 MR. PRESS: Will you call a break or should I  
13 suggest a time to break?

14 THE COURT: Well, after an hour, I will leave it to  
15 you, if you think you have a place that is logical to break,  
16 you will know better than I what from a, presenting a case  
17 point of view, where a logical break is so I don't break it  
18 up like in the middle of a thought of some kind. After an  
19 hour, you can suggest it. If you don't, if you go too long I  
20 will do it. But you know your case. You will know where the  
21 logical break point is.

22 MR. PRESS: Okay.

23 (The jury enters the courtroom.)

24 THE COURT: Good morning, everybody.

25 Please be seated. I believe, ladies and gentlemen,



1 that Mr. Press is going to resume the video testimony of  
2 Roland Wilder.

3 MR. PRESS: That is true.

4 (Videotape of Roland Wilder continues)

5 MR. PRESS: Your Honor, this is a good time for a  
6 break.

7 THE COURT: We will take a break. Sometimes  
8 watching the screen is more tiring than live testimony. We  
9 will take a 15-minute break. It is 25 of 10 now. We will go  
10 until ten of 10.

11 (The jury leaves the courtroom.)

12  
13 (Recess.

14  
15 (Jury enters the courtroom.)

16 THE COURT: Mr. Press, you can resume with the  
17 video.

18 MR. PRESS: Thank you, Judge.

19 (Videotape of Roland Wilder, resumes).

20  
21 MR. PRESS: Your Honor, I think we are going to  
22 seque into a new kind of topic.

23 I understand there is 40 more minutes of direct  
24 testimony before the cross examination begins.

25 THE COURT: If you think it is a good spot topic

1 wise.

2 MR. PRESS: I do.

3 THE COURT: Ladies and gentlemen, we will, it has  
4 been an hour since the last break. We will take a 15- minute  
5 break. My watch says ten of 11. We will break until 11:05.

6 Do not discuss the case amongst yourselves. Keep  
7 an open mind until you have heard all the evidence.

8 (Jury leaves the courtroom.)

9 (Recess)

10

11 (The jury enters the courtroom.)

12 THE COURT: Mr. Press, you may continue.

13 MR. PRESS: Thank you, Judge.

14 (Videotape of Roland Wilder continues).

15 MR. PRESS: Your Honor, that is the end of the  
16 direct examination by Mr. Wilder.

17 THE COURT: I will explain to the jury now. Okay.

18 MR. PRESS: Yes, thank you.

19 THE COURT: Ladies and gentlemen, at the time this  
20 video was made, not at the same time, the video was made,  
21 there was cross examination by Mr. Fram.

22 MR. FRAM: By Mr. Katz.

23 THE COURT: By Mr. Katz, who is co-counsel with Mr.  
24 Fram. He has been fairly quiet so far, but he has been  
25 actively participating in the case and he has been co-

1 counsel to Mr. Fram.

2 We are now going to see, again on video, the cross  
3 examination by the defense of this witness.

4 I want to emphasize to you this is not testimony  
5 being offered by the plaintiff. This is cross examination,  
6 in the usual fashion we had, if we had a witness here on the  
7 stand, the plaintiff could give direct examination, and then  
8 the defendant would cross examine. We are doing this, in a  
9 sense the same thing here, but we are doing it through video.  
10 Again, it all has the same force and effect, both the direct  
11 testimony and the cross, as though given here in court as  
12 oral testimony, you treat it just as you would here in court.  
13 Give it no more weight, no less weight.

14 MR. PRESS: Thank you, Judge.

15 ( Videotape of cross examination by Mr. Katz of  
16 Roland Wilder is played)

17 MR. PRESS: Your Honor, that objection I would like  
18 it ruled on.

19 THE COURT: I am going to allow it. Go ahead.

20 (Tape continues)

21

22

23 MR. PRESS: That concludes Katz's cross  
24 examination.

25 THE COURT: That concludes it.

1 MR. PRESS: Yes, sir. I had a little bit of  
2 follow-up examination after that.

3 Forget it. We are not going to offer the redirect,  
4 Judge, of Mr. Wilder.

5 THE COURT: So you are not offering it.

6 MR. PRESS: No, I am not going to.

7 THE COURT: Does that complete Mr. Wilder's  
8 testimony.

9 MS. ACCHIONE: Your Honor, we still have to play  
10 the supplemental deposition, that was taken in 2011.

11 THE COURT: Okay.

12 MR. PRESS: Again, your Honor, the direct of that  
13 deposition taken this year was taken by Mr. Fram. So if we  
14 could have the same instruction to the jury.

15 THE COURT: Meaning?

16 MR. PRESS: It is not our evidence.

17 THE COURT: It is really in the nature of cross  
18 examination.

19 MR. PRESS: Correct.

20 THE COURT: We are going to hear further there was  
21 a further videotape deposition taken of Mr. Wilder three or  
22 four months ago, was it three or four months ago.

23 MR. FRAM: Yes, your Honor. March.

24 THE COURT: It is again in the nature of cross  
25 examination, it is not being offered by the plaintiff. It is

1 the nature of what we have here in the courtroom, cross  
2 examination. So you can proceed with that.

3 (Videotape of Roland Wilder is played)

4  
5 MR. FRAM: No, no. Stop. We haven't heard the  
6 rest of the testimony.

7 THE COURT: You dropped a whole lot of testimony.  
8 You dropped it. You did that the last time by the way.

9 MR. FRAM: Let's do this. Can we play --

10 MR. PRESS: This is not our technical issue.

11 THE COURT: I didn't say it was I am not trying to  
12 blame anybody. I am trying to fix it.

13 MR. FRAM: Can we play the tape through, what we  
14 agreed to play without trying to switch the documents. Then  
15 just show the document at the end. I think that will solve  
16 our problem. Play through the rest of my exam and then go  
17 directly into the additional examination by Mr. Press.  
18 Without flipping through the documents.

19 (Off-the-record discussion)

20 MR. FRAM: Do your best.

21 (Videotape continues).

22  
23 THE COURT: Are we switch switching to redirect  
24 now?

25 MR. PRESS: Yes.

1 THE COURT: I want to tell the jury.

2 This completed the cross examination of Mr. Fram.

3 As you know, in our procedure, after cross we  
4 usually give the other side a chance for what we call  
5 redirect, to elicit testimony on their own. So what you hear  
6 from this point is Mr. Press's questions on redirect  
7 examination. This is the plaintiff offering this witness.

8 MR. PRESS: Thank you, Judge.

9 (Videotape continues)

10 Okay.

11 MR. PRESS: That concludes Mr. Wilder's testimony,  
12 Judge.

13 THE COURT: I think we ought to take a break. I  
14 want to take the technical -- let us take until quarter to  
15 one, twelve 45 we will return.

16 (The jury leaves the courtroom.)

17 THE COURT: Don't discuss the case among  
18 yourselves. Keep an open mind until you have heard all the  
19 evidence.

20 (The jury leaves the courtroom.)

21 THE COURT: I hate to bore you but I want to put on  
22 the record the pages and lines that were read. They are part  
23 of the transcript. If there is an appeal I want there to be  
24 a memorialization of what had been played in court. I had  
25 the transcript so I was following it and noting it as it

1 came.

2 This is going to be boring but I have to take a  
3 couple of minutes.

4 With respect to the deposition of August 8, 2008, I  
5 am, we picked up today starting at page 42, line 5, to page  
6 53, line 12. And continued with page 53, line 15 to page 72,  
7 line 16. We went to page 73, line 7, to page 78, line 11.  
8 We went then to page 82, line 6, to page 84, line 7.

9 We went to page 85, line 14 -- line 4, to page 91,  
10 line 17. Then we went to page 92, 10, to page 93, line 6.

11 We then went to page 94, line 3, page 94, line 13.  
12 We then went to page 95, line 7, to page 97, line 24.

13 Then went to page 98, line 1, to page 1 oh one line  
14 5.

15 Went to 101 line 8 to 102, line 9. Then we went to  
16 104 line 5 to page 105 line 15. Then to 106 line 4 to page  
17 108, line 9. We went to page 108, line 11, to 110, line 15.

18 We went to page 111, line 19 to page 113, line 8.  
19 Went to page 115, line 22 to page 121, line 13. Then went to  
20 page 122, line 9, to page 123, line 19. Then went to page  
21 125, line 16 to page 127, one. We then went to page 127, 18,  
22 to page 138, line 23.

23 Then went to page 139, line 5 to page 140, line 22.  
24 Then to page 141 line 2 to page 145, line 1.

25 We then went to page 145 line 12 to 146 line 22.

1 We then went to page 146 line 24 to page 153, line 15.

2 We then went to page 155 line 7 to page 158, line  
3 23.

4 Went to page 165, line 13 to page 166, line 4. We  
5 then went to page 167, line 7, to page 168, line 13.

6 We then went to page 179, line 21, to page 182,  
7 line 23. Then went to page 183, line 1, to page 183, line  
8 24. We then went from page 184 line 3 to one 84, line 12.  
9 And then the last segment of the direct was page 187 line 22  
10 to page 188, line 15.

11 On that same deposition the cross examination was  
12 Mr. Katz, was page 198, line 22 to page 212, line 10.

13 Now, in the deposition of March 21, 2011, there was  
14 cross examination by Mr. Fram from page 4, line 1, to page  
15 17, line 5. There was redirect examination by Mr. Press from  
16 page 20, line 22, to page 22, line 11.

17 Sorry to bore you with that, but I think the record  
18 ought to be clear what was said here in the courtroom and  
19 what the jury heard. So.

20 MR. PRESS: Thank you, your Honor.

21 THE COURT: I am sorry to subject you to that. I  
22 will see you all at quarter to one. What is next.

23 MR. PRESS: Howard Hollander.

24 MR. PRESS: A short reading.

25 MS. RODRIGUEZ: Really short. Five minutes.



1 THE COURT: Really short.

2 MS. RODRIGUEZ: Seven minutes, tops.

3 THE COURT: Who is going to do the reading.

4 MS. RODRIGUEZ: I am going to ask the questions and  
5 Mr. Jacobson is going to ask the questions.

6 THE COURT: Any members of Actors Equity?

7 MS. RODRIGUEZ: No.

8 THE COURT: Is there any cross on that.

9 MR. KATZ: I will ask a few questions, Judge. Same  
10 witness.

11 THE COURT: But I mean who is going to read the it.

12 MR. KATZ: I will read the questions that I asked  
13 at the deposition.

14 MS. RODRIGUEZ: Mr. Jacobson can still provide the  
15 answers.

16 THE COURT: You will still play the role of the  
17 witness.

18 MR. JACOBSON: Correct.

19 THE COURT: All right. I will see you all in 15  
20 minutes.

21 (Recess)

22 THE COURT: I understand, Ms. Rodriguez, there is  
23 an objection of some kind you want me to rule on before the  
24 jury comes out.

25 MS. RODRIGUEZ: There is an evidentiary objection.

1 This is the document, P-435. The witness on the stand --

2 THE COURT: This relates to the reading we are  
3 going to do.

4 MS. RODRIGUEZ: Yes.

5 THE COURT: This is a document not yet in evidence.

6 MS. RODRIGUEZ: That's correct.

7 THE COURT: Okay. Tell me what the issue is.

8 MS. RODRIGUEZ: The witness on the stand is Mr.  
9 Reifsnyder who identifies the document. He recognize it is  
10 as an email that is part of a union bulletin board, and  
11 recognizes the electronic signature on it as his. We are  
12 requesting Mr. Reifsnyder about the portion of the email  
13 towards the bottom, that says, Duane.

14 THE COURT: Let's start out. Who is the email from  
15 and to?

16 MS. RODRIGUEZ: From Robert Reifsnyder.

17 THE COURT: That is not what it says.

18 MS. RODRIGUEZ: Robert Reifsnyder.

19 THE COURT: I see it, this is a previous message.  
20 He is sending it to --

21 MS. RODRIGUEZ: He is sending it to Allied pilots,  
22 I believe. He testifies.

23 THE COURT: Allied?

24 MS. RODRIGUEZ: Allied.

25 THE COURT: APA.

1 MS. RODRIGUEZ: APA.

2 THE COURT: And the subject, ALPA won't take us.

3 MR. KATZ: Another email, your Honor, it says he is  
4 sending it to Robert Johnson, Jr..

5 THE COURT: That is a different, that is the  
6 original, this is normally when you are putting the history,  
7 you have, it says original message.

8 MR. KATZ: That is the part Ms. Rodriguez read to  
9 Mr. Reifsnyder during his deposition.

10 THE COURT: Who is there Johnson.

11 MS. RODRIGUEZ: I don't know who Mr. Johnson is.

12 THE COURT: You don't know. You have no idea who  
13 is.

14 MS. RODRIGUEZ: No.

15 THE COURT: Anybody know who is he?

16 MR. KATZ: Don't know.

17 THE COURT: Somebody waving in the back, I be he  
18 can get an answer.

19 MS. RODRIGUEZ: He is a American pilot.

20 THE COURT: Just a American pilot. Okay. And who  
21 is Reifsnyder.

22 MS. RODRIGUEZ: Mr. Reifsnyder is also a American  
23 pilot. And a member of APA.

24 THE COURT: So Bob, this is, Bob, why I disagree  
25 with many of the documents, either I can see the rationale

1 for your argument. Generally I can see the rationale for  
2 your argument. Here I can't. Do you think, it, you you  
3 think he decides to keep \$15,000 out of ALPA. It goes on  
4 about the dispute and the Ozark merger, specifically ignored  
5 merger policy. Duane Woerth stood in front of the APA, told  
6 us the TWA pilots to get real on the aspirations of the  
7 seniority. Pandering? Maybe. The kind of talk it seems to  
8 he has any idea he might have on the seniority integration.

9 What is this being offered for?

10 MS. RODRIGUEZ: It is not being offered for the  
11 truth of the matter. The document was shown to Mr.  
12 Reifsnyder during his five-minute deposition, and he  
13 identified it as an email that he sent as part of, that is  
14 part of a union bulletin board, and owe on.

15 THE COURT: Where do we get this union bulletin  
16 board business? I mean, something, is this posted for all  
17 American pilots.

18 MS. RODRIGUEZ: It was posted for American pilots  
19 to see. He testifies as to that, your Honor. It is a place  
20 for --

21 THE COURT: What contested fact in this case is  
22 this being offered proof of.

23 MS. RODRIGUEZ: It is offered for Mr. Reifsnyder  
24 wrote the email to reflect that Duane Woerth came to the APA,  
25 and said it is time for the TWA --

1 THE COURT: It is offered for the truth of that.

2 MS. RODRIGUEZ: No.

3 MR. KATZ: That is what they are offering it for.

4 THE COURT: If you are offering it to try to get  
5 something Duane Woerth said in front of a group, you are  
6 offering it for the truth of the matter.

7 MR. KATZ: That's correct.

8 MS. RODRIGUEZ: And Duane Woerth is a party.

9 THE COURT: First of all, there is going to be  
10 plenty of proof, I believe, that what, the get real comment.  
11 This is not the only proof of the get real.

12 MR. KATZ: This is only their best proof.

13 THE COURT: Don't know about best proof. I heard  
14 it. I have seen it in stuff I reviewed.

15 MS. RODRIGUEZ: This email was circulated to, was  
16 also circulated to members of the TWA pilots as well. I mean  
17 it had legs and it found its way into other people's  
18 mailboxes. But Mr. Reifsnnyder was the scrivener, if you  
19 will, of the email.

20 MR. KATZ: Double and triple hearsay.

21 THE COURT: Then you are trying to prove that Duane  
22 Woerth stood up in front of an APA group.

23 MR. JACOBSON: Board of directors.

24 THE COURT: BOD, board of directors, right. And  
25 said that he had told the TWA pilots to get real. That is

1 the fact you want to prove.

2 MS. RODRIGUEZ: Yes.

3 THE COURT: Mr. Jacobson.

4 MR. JACOBSON: Your Honor.

5 THE COURT: You leaped up.

6 MR. JACOBSON: We don't want to prove the truth  
7 that he told the TWA pilots to get real. We want to prove  
8 that he told the APA that he told the, to get real.

9 THE COURT: I understand. I understand that. I  
10 understand there is a very fine distinction there. You want  
11 to show he was pandering in effect to the APA pilots. But  
12 this, why is this direct testimony of that? Bob Johnson is  
13 the one who apparently saw this.

14 MS. RODRIGUEZ: No, Robert Reifsnyder sent it.

15 THE COURT: He sent the email, but Bob -- okay. He  
16 sent the email.

17 MR. PRESS: Your Honor, if I may.

18 THE COURT: So the fact that he said it, that is  
19 the truth of it, and he is not in court. You can't cross  
20 examine that he used those words, is that what you said, how  
21 did you say it. I mean, if somebody got up and said I was in  
22 the room, got on the stand and said I heard, I was, I  
23 attended the meeting of the American pilots, and I heard  
24 Duane Woerth address us, and he got up and said, quote, this  
25 quote here. That is direct evidence.

1 MR. PRESS: That is Mr. Reifsnyder's testimony,  
2 that he was at the meeting and he made that post.

3 THE COURT: I understand. So what is wrong with  
4 that?

5 MR. KATZ: The witness says he doesn't remember --

6 THE COURT: Is Reifsnyder --

7 MS. RODRIGUEZ: Mr. Reifsnyder is the one whose  
8 deposition transcript we have and he says, and, do you  
9 recognize this document? Yes. Can you tell me what it is?  
10 It looks like an email, that is an email of a post that I  
11 made on a union bulletin board. And is that bulletin board  
12 refer to as a challenge and response bulletin board.

13 "ANSWER: Yes. And you tell me what the purpose of  
14 the challenge and response bulletin board is? It is for  
15 pilots to share ideas, comments --

16 THE COURT: If Reifsnyder, this, if is, because he  
17 is writing to Johnson, if Reifsnyder's direct testimony is  
18 that I was present, you know, when Duane Woerth got up, and  
19 said, was quoted here, and I agree with you, that question,  
20 it is not a question that I it is really true that he said  
21 that to the TWA pilots, what is relevant is that he told it  
22 to the American pilots what that he said it.

23 And I agree with that. Now, if somebody wants an  
24 instruction to the jury on that point, that it is not for the  
25 fact that he really said it to the TWA pilots but that he did

1 say, used that testimony, I will give that clarifying  
2 instruction.

3 MS. RODRIGUEZ: Your Honor, I will raise the point  
4 to save Mr. Katz the trouble of doing it. What he does say  
5 was --

6 THE COURT: He doesn't want you to make his  
7 arguments for him.

8 MR. KATZ: With the them three of them talking  
9 about this, maybe I could be permitted to say a word.

10 THE COURT: I will give you time.

11 MR. KATZ: You won't suffer from an undelivered  
12 argument.

13 MR. KATZ: Mr. Reifsnyder says he doesn't remember  
14 what Mr. Worth said at the April 5, 2001 board of directors  
15 meeting. He doesn't remember --

16 THE COURT: Who says that.

17 MR. KATZ: The witness, Reifsnyder.

18 MS. RODRIGUEZ: What he says, your Honor, is I show  
19 him the document. He recognizes it as his document, his  
20 email. He identifies it as his email.

21 I said do you recall writing this. He said not  
22 specifically.

23 Did you attend the APA board of directors meeting  
24 on April 1, I mean, I am sorry, April 5, 2011?

25 Yes.



1           Do you recall whether or not Duane Woerth attended  
2     the meeting?

3           I do recall, he did attend. Yes.

4           And Duane Woerth was the president of the Air Line  
5     Pilots Association. Yes.

6           Did Mr. Woerth speak at the APA board meeting?

7     Yes. Do you recall Mr. Woerth making a statement concerning  
8     the TWA pilots and he says not specifically, but I have no  
9     reason to believe, I mean I wrote this email and I don't have  
10    any reason to believe that he didn't from what I wrote here.

11          THE COURT: What is the date of the email?

12          MR. PRESS: Contemporaneous.

13          MR. KATZ: April 17.

14          THE COURT: I am sorry. I don't see the date.

15          MR. JACOBSON: April 17, 2001, your Honor.

16          THE COURT: So it is not immediately  
17    contemporaneous but it is very.

18          MS. RODRIGUEZ: In the same, in the ballpark.

19          THE COURT: If it is not present recollection  
20    recorded it is past recollection recorded. And it is  
21    recorded just days, something he wrote just days. I am going  
22    to admit that.

23          MR. KATZ: Your Honor --

24          THE COURT: Go ahead.

25          MR. KATZ: 803 (5) on recorded recollection says --

1 THE COURT: Let me get it out, please. 803 (5).

2 MR. KATZ: Yes, sir.

3 THE COURT: Just a minute. Let me get it.

4 THE COURT: I have it. Recorded recollection.

5 MR. KATZ: Second sentence toward the even end of  
6 the paragraph says for a recorded recollection the memorandum  
7 or record may be read into evidence but may not itself be  
8 received as an exhibit, unless offered by an adverse party.  
9 We are not offering it. We are objecting to it. We have  
10 objected to it in the pretrial order. So while it may be  
11 read into the record, it may not be received as an exhibit.

12 THE COURT: Okay. But that is, I don't think the  
13 plaintiff is objecting to that. It just won't be an exhibit  
14 that goes to the jury.

15 MR. KATZ: The plaintiffs are asking for it to be  
16 received in evidence and go to the jury.

17 THE COURT: How about withdrawing that?

18 MR. PRESS: Withdrawn.

19 THE COURT: See? They are so accommodating. I  
20 just utter the word withdrawn and he withdraws.

21 MR. KATZ: He didn't say that when I asked him.

22 THE COURT: You must not have a black robe on.

23 Just like, it is just like an airline captain. He  
24 has gold bars here, gold bars there, we know he is a captain.  
25 So I don't have gold bars but I have a shoddy, shabby robe.

1 You know, when my former partner 20 years ago sent me this  
2 robe as a gift, I opened it up, and it said, there is a  
3 little printed note that said we hope that you and the other  
4 members of the choir will get great use out of it.

5 So what can I tell you.

6 All right. I am going to let it in, under 803 (5).  
7 I think it is close enough in time to be recorded, a recorded  
8 recollection under circumstances that has, you know, the ring  
9 of truth.

10 But I agree with Mr. Katz and Mr. Press apparently  
11 agrees, too, that the document itself will not be an exhibit,  
12 will not go to the jury. You can refer to the testimony like  
13 any other testimony.

14 MR. JACOBSON: Your Honor, when in the course of  
15 reciting the testimony with can I read in that email then.  
16 Because he doesn't read it in. He identifies it, talks about  
17 it generally but it is not actually read in his deposition.

18 MS. RODRIGUEZ: Part of it is.

19 MR. KATZ: I think that we are stuck with whatever  
20 the transcript shows. We can't make up things that didn't  
21 happen.

22 MR. JACOBSON: The document happened. We can read  
23 the document. It is just that it can't be in evidence as an  
24 exhibit. I want to know when I should read the document.

25 THE COURT: It is a technical matter. If he was

1 here, you know, you would just, and he gave exactly the same  
2 testimony we talked about, which, this is my document but I  
3 was there, I heard Captain Woerth. But you know, I don't --  
4 I sitting here today ten years later don't remember these  
5 exact words. I would let him read it in.

6 MR. JACOBSON: May I read it in at the close of Ms.  
7 Rodriguez's questions and before the cross examination.

8 MS. RODRIGUEZ: It is --

9 THE COURT: What are you saying, Ms. Rodriguez.

10 MS. RODRIGUEZ: It is close enough to be here.

11 MR. JACOBSON: It is not really in there, no.

12 MS. RODRIGUEZ: Once to direct your attention to  
13 the bottom third of the airline, the line that begins. --

14 THE COURT: Don't mumble. I have lots of thread of  
15 what you were saying.

16 MS. RODRIGUEZ: Mr. Jacobson wants to read it in at  
17 the end of his testimony.

18 THE COURT: What is in the testimony that we have  
19 now?

20 MR. JACOBSON: The phrase "get real" but not the  
21 full sentence.

22 MR. KATZ: Ms. Rodriguez poses a question. She  
23 says I want to direct your attention to the bottom third of  
24 the email, the line that begins Duane Woerth stood in front  
25 of the APA and the BOD, board of directors, and told us that

1 he had told the TWA pilots to get real on their aspirations  
2 of the seniority merge, pandering, maybe, but hardly the kind  
3 of talk did that would seem to counsel against any ideas we  
4 might have seniority integration.

5 THE COURT: So it is in the testimony. Because the  
6 other parts of this, Mr. Jacobson, the other parts I am not  
7 sure are admissible.

8 MR. JACOBSON: Okay. What is a recollection. That  
9 is a recollection recorded. When he says, gives his opinion  
10 as to what ALPA National would do, that is not a recollection  
11 recorded. That is his opinion. I don't know if that is  
12 admissible particularly.

13 MR. KATZ: His description of TWA and Ozark.

14 THE COURT: I don't want that, the jury shouldn't  
15 have to consider what the TWA and Ozark merger was all about  
16 or what the issue was in that case or how that issue was  
17 resolved.

18 MR. KATZ: We think we should stick with the  
19 transcript, your Honor.

20 MR. JACOBSON: I am persuaded.

21 THE COURT: I think that, I wanted that line in,  
22 but apparently it is in. So I am going to let it go just  
23 like it is.

24 MR. KATZ: Thank you, your Honor.

25 THE COURT: I will I am allowing it in and I accept

1 Katz's objection now agreed to by Mr. Press. You can't get  
2 the document in.

3 And by the way, the fact that there are owe many  
4 other things in here that are not admissible, I thought it, I  
5 would send it in on a redacted basis or something but I think  
6 with the rule says you don't introduce the document, that  
7 will cover it. I think whoever took the deposition did it  
8 right, and got it in. And we will go that way.

9 MR. JACOBSON: All right.

10 THE COURT: Okay.

11 MS. RODRIGUEZ: Thank you, your Honor. Then we are  
12 ready.

13 THE COURT: We are ready.

14 MS. RODRIGUEZ: Your Honor, are you going to  
15 instruct the jury, I am going to have Mr. Jacob sit in the  
16 witness box.

17 THE COURT: I am going to tell them that the  
18 plaintiff is offering up some testimony, Robert Reifsnyder.

19 MS. RODRIGUEZ: Yes.

20 THE COURT: Robert Reifsnyder, that his deposition  
21 was not video'd. They are used to videos now, it was not  
22 video'd so we are going to read it and I am going to explain  
23 that Mr. Jacobson is going to play the role of the witness.  
24 And the lawyers will play themselves. For the direct  
25 examination of, and the cross examination.

1 MS. RODRIGUEZ: Thank you.

2 THE COURT: Okay.

3 THE COURT: Does the defendant want an explanation  
4 of the fine points of the hearsay rule? I would think they  
5 wouldn't, but.

6 MR. FRAM: With respect to this issue, your Honor?

7 THE COURT: Just the issue that it is not for the  
8 fact that he really said it. Before the TWA pilots, as  
9 opposed to the American.

10 MR. FRAM: I don't think so, your Honor.

11 THE COURT: You okay.

12 (Jury enters the courtroom)

13 THE COURT: Ladies and gentlemen, I am sorry for  
14 the short delay. We had a legal matter we had to take care  
15 of. It eight up a few minutes.

16 Now, ladies and gentlemen, the plaintiff is going  
17 to be offering some testimony of somebody by the name of  
18 Robert Reifsnyder. His deposition was taken and it is going  
19 to be offered in the form of deposition testimony. But this  
20 testimony was not videotaped. In other words, it was taken  
21 by a court reporter like our fine court reporter here who is  
22 taking it, but all we have now is a transcript. We don't  
23 have a video screen to show you. So we are going to have Mr.  
24 Jacobson, the good-looking fellow back there, sitting in,  
25 raise your hand, if you would, he is going to play Mr.

1 Reifsnyder. He will get on the stand and be Mr. Reifsnyder.  
2 The lawyers will be themselves. The lawyer who took the  
3 deposition, was it you, Ms. Rodriguez.

4 MS. RODRIGUEZ: Yes, your Honor.

5 THE COURT: Ms. Rodriguez will be Ms. Rodriguez,  
6 and then the cross was done by Mr. Katz.

7 MR. KATZ: That's correct, your Honor.

8 THE COURT: And Mr. Katz will play himself doing  
9 the cross. Okay. But again, it has the same force and  
10 effect as testimony under oath, and has the same force and  
11 effect as if it were given right here in the courtroom by Mr.  
12 Reifsnyder.

13 Okay. So you may proceed.

14 Mr. Reifsnyder.

15 MS. RODRIGUEZ: Mr. Reifsnyder, take the stand.

16 (DEPOSITION TESTIMONY OF ROBERT REIFSNYDER READ AS  
17 FOLLOWS) .

18 (EXAMINATION BY MS. RODRIGUEZ)

19 THE COURT: You are sworn.

20 Q. Good evening, Mr. Reifsnyder. My name is Lisa  
21 Rodriguez. I am an attorney representing the plaintiffs in  
22 an action against the Air Line Pilots Association, ALPA, and  
23 I appreciate the time you are taking tonight to sit for this  
24 deposition.

25 And I will be brief and take as little time, as



1 little of your time as possible. Can you please state your  
2 name for the record?

3 A. Robert Harlan Reifsnyder, Jr..

4 Q. And Mr. Reifsnyder, are you a pilot for American  
5 Airlines?

6 A. I am.

7 Q. Are you also a member of ALPA? I am sorry. Are you  
8 also a member of the APA?

9 A. Yes.

10 Q. And how long have you been a member of the APA?

11 A. 17 and one half years.

12 Q. Are you a member of APA's board of directors?

13 A. No.

14 Q. I am sorry?

15 A. No. I am not.

16 Q. Have you ever been a member of the board of directors?

17 A. No.

18 Q. Okay. The court reporter is going to hand you a  
19 document that has been marked. Do you have that document?

20 A. I do.

21 Q. And do you recognize this document?

22 A. Yes.

23 Q. Can you tell me what it is?

24 A. It looks like an email, that is an email of a post that  
25 I made on a union bulletin board.

1 Q. And is that bulletin board referred to as a challenge  
2 and response bulletin board?

3 A. Yes.

4 Q. Can you tell me what the purpose of the challenge and  
5 response bulletin board is?

6 A. It is for pilots to share ideas, comments, about  
7 airline, union, and other stuff, that may not have anything  
8 to do with any of those.

9 Q. Okay. And I want to direct your attention to the bottom  
10 third of the email. To the line that begins, Duane Woerth  
11 stood in front of the APA, and it says BOD, board of  
12 directors, and told us that he had told the TWA pilots to,  
13 quote, get real, close quote, on their aspirations of the  
14 seniority merge. Pandering? Maybe. But hardly the kind of  
15 talk that would seem to counsel against any ideas we may have  
16 on the seniority integration. And then it is signed Reif.  
17 Is that your signature, electronic signature?

18 A. Yes.

19 Q. Do you recall writing this?

20 A. Not specifically.

21 Q. Did you attend the APA board of directors meeting on  
22 April 1, I mean, I am sorry, April 5, 2001?

23 A. Yes.

24 Q. Do you recall whether or not Duane Woerth attended that  
25 meeting?

1 A. I do recall that he did attend, yes.

2 Q. And Duane Woerth was the president of the Air Line  
3 Pilots Association at that time, is that correct?

4 A. Yes.

5 Q. Did Mr. Woerth speak at the APA board meeting?

6 A. Yes.

7 Q. Do you recall Mr. Woerth make being the statement  
8 concerning the TWA pilots?

9 A. Not specifically. But I have no reason to believe, I  
10 mean, I wrote this email, and I don't have any reason to  
11 believe that he didn't, from what I wrote here.

12 Q. Did you post on the message -- when you post on the  
13 message board, it is not your intention to mislead people, is  
14 it?

15 A. That's correct.

16 Q. And you generally, it is generally your intention to be  
17 truthful and honest when communicating on the board?

18 A. That is correct.

19 Q. Okay. I have no further questions.

20 CROSS EXAMINATION

21 BY MR. KATZ:

22 THE COURT: Okay. Now will be the cross  
23 examination.

24 Q. Mr. Reifsnnyder, I am Dan Katz. I am the lawyer for the  
25 Air Line Pilots Association. I have never met you but I do

1 have a few questions about the same email.

2 A. Okay.

3 Q. You said in answer to Ms. Rodriguez's question that you  
4 didn't specifically recall after making the statement that  
5 you have quoted in the challenge and response entry. That is  
6 right?

7 A. That's correct.

8 Q. Was this challenge and response entry in response to the  
9 one cent out above it on this deposition exhibit from Robert  
10 Johnson, Jr.?

11 A. Yes.

12 Q. And his subject line is ALPA won't take us. Would you  
13 agree that he is being facetious?

14 A. Give me just a second. Open even paren, reading, close  
15 paren. First of all, I don't know if he was the, let me  
16 start from the beginning so we get, make sure we get the  
17 specific question.

18 Q. Okay.

19 A. I don't know that that is his subject line. You noticed  
20 that is a we, i.e., regarding that topic. I don't know  
21 whether or not he was the original poster of that thread. So  
22 we will just start with that. So is that what you were  
23 talking about, whether he was being facetious or facetious in  
24 the bottom of his -- in the body of his email.

25 Q. I am talking about both?

1 A. Well, again, I don't recall the thread. I don't recall,  
2 you know, so I certainly don't recall who was the original  
3 poster in that thread who would have written it first. ALPA  
4 won't take us. I do not think he is being facetious in the  
5 body of his email.

6 Q. He says what I was wondering was, would ALPA take us if  
7 we stapled TWA to the bottom of our list and then getting to  
8 the last sentence of his entry, might they block an attempt  
9 to reaffiliate. Do you think that he is joking or not?

10 A. No, I don't think he is joking. I think he is asking, I  
11 think he is asking an honest question. I think he is  
12 wondering would they block us, based on how they treated the  
13 TWA pilots. I think that is what he is asking.

14 Q. Do you know him to be a supporter of reaffiliation with  
15 the Air Line Pilots Association?

16 A. I don't remember. I don't recall either way. I don't  
17 recall either way.

18 Q. And do you recall having any conversations with Captain  
19 Johnson, either on the phone or in person?

20 A. No.

21 Q. Do you know him?

22 A. Yes.

23 Q. But you don't know whether he was an ALPA supporter or  
24 not?

25 A. I do not know.

1 Q. It was long time ago. Do you remember anything that  
2 Duane Woerth said?

3 A. I am sorry. I don't know where you are. That is not  
4 the next question on this sheet.

5 Q. Line 13 and 14. It was a long time ago. Do you  
6 remember anything that he, that is, Duane Woerth, said?

7 A. Not specifically.

8 Q. And you don't, as we are sitting here today, if it  
9 weren't for this email, you wouldn't remember him saying the  
10 words, get real, would you?

11 A. Probably not.

12 MR. KATZ: That is it.

13 THE COURT: Okay. Thank you very much, Mr.  
14 Jacobson.

15 Okay, Mr. Press. Before we go on, I am sorry, I  
16 would like the date of that deposition that was taken, I  
17 don't have it in front of me. Gave me the date.

18 MS. RODRIGUEZ: September 17, 2008.

19 THE COURT: Anyone, 17, '08. What were the page  
20 and lines.

21 MS. RODRIGUEZ: Page 4, line 15 -- 15 through 25.

22 THE COURT: Am sorry. 4, 15, to 4, 25.

23 MS. RODRIGUEZ: Direct. Page 5, line 1, through  
24 25.

25 THE COURT: To 5, 25.

1 MS. RODRIGUEZ: Yes. 6, line 1, through 25. Page  
2 7, line 1 through 25. Page 8, 1 through 25.

3 Now, this is Katz's cross examination.

4 THE COURT: I want everything.

5 MS. RODRIGUEZ: Page 9, one through 25. Page 10,  
6 lines 1 and 2, and then Mr. Katz skipped some lines.

7 THE COURT: Where you pick up --

8 MS. RODRIGUEZ: Page 10, line 13 through 19.

9 THE COURT: That is it.

10 MS. RODRIGUEZ: That is it.

11 THE COURT: Okay. I just want again the record to  
12 reflect what was actually included that won't appear in the  
13 transcript. Okay.

14 You may proceed, Mr. Press.

15 MR. PRESS: Our next witness is Howard Hollander.

16 Mr. Jacobson will be asking him the questions,  
17 Judge.

18 HOWARD HOLLANDER, Sworn.

19 DIRECT EXAMINATION BY

20 MR. JACOBSON:

21 THE COURT: You may proceed.

22 Q. Good afternoon, Mr. Hollander. I would like to first  
23 ask you a few background questions about who you are and  
24 where you are from, okay?

25 A. Fair enough.

1 Q. Where did you grow up, sir?

2 A. Born and raised in the Bronx. Latter part of it was up  
3 in West Chester County, New York.

4 Q. You are one of the plaintiffs in this case?

5 A. I am.

6 Q. I would like to ask you about your education. How much  
7 education did you go through, sir?

8 A. Graduated high school, graduated college.

9 Q. All right. And at some point you became interested in  
10 becoming an airline pilot?

11 A. That is correct. In my high school years.

12 Q. Tell the jury how you first got involved with flying and  
13 become a pilot?

14 A. I was 16 years old, a friend of mine from high school, I  
15 believe we were, can't remember if we were eleventh graders  
16 or 12th graders but his father had given him a pair of  
17 tickets, so to speak, to take a parachuting jump lesson. And  
18 as being good friends he chose me and although my career was  
19 somewhat different, I was planning on an electrical  
20 engineering career, I joined my partner on a trip up to  
21 Orange County, New York, where there was a morning  
22 instructional class, and then the afternoon we boarded a  
23 McDonnell Douglas DC three, and took a ride and at some point  
24 were pushed out of the airplane.

25 It was a successful landing on both parts, and



1 following that there was some discussion on the ground with  
2 the instructors and the pilots and I was impressed with what  
3 they do. They told us that we were the foolish ones to jump  
4 out of a perfectly good airplane and I was invited back to  
5 take a free lesson and I was, I was instantly turned on. I  
6 said I can do this. From that date forward I focused on an  
7 aviation career.

8 Q. So you are 16 years old?

9 A. Pretty much.

10 Q. What did you do to get the licenses, and certifications  
11 you need to become a pilot?

12 A. I did start some introductory lessons at a local airport  
13 by me.

14 At some point I was advised that because I was  
15 accepted into Emory Riddle down in Daytona Beach, Florida, it  
16 is an aviation school, that I should stop taking the classes  
17 because no matter what I did in this private school, they  
18 were going to start me from the very beginning any way. So I  
19 ceased my private lessons at West Chester and eventually in  
20 the fall of 1981 started my four-year tenure at Emory Riddle  
21 and they started me off from exactly what they said, square  
22 one, and provided me with the education and licensing for all  
23 the documents that I possess today.

24 Q. Was that a four-year program?

25 A. That was a four-year program. Graduating with a

1 bachelor of science in aviation sciences.

2 Q. What year did you graduate, sir?

3 A. 1985.

4 Q. And did you then look for a job as a pilot?

5 A. I did.

6 Q. And where did you look, what kind of job did you get?

7 A. Well, we found out, again, they are fairly educated,  
8 they educate us fairly well. Flying jobs for like TWA or Pan  
9 Am or Eastern were not exactly readily available to such  
10 unexperienced pilots. So we tend to find, shall we say  
11 smaller type jobs to, what would be a good word to say, we  
12 find smaller jobs to accumulate experience and flight time  
13 hours unless of course you chose the military which nicely  
14 provided that for you free of charge.

15 But my first job actually was working for the  
16 school as an instructor for a short period of time and then I  
17 transferred back to New York because Florida just didn't suit  
18 my lifestyle very well. My first job was Poughkeepsie, New  
19 York for a company called Richmore Aviation which was a  
20 flight school and charter department, and from there I was  
21 eventually hired by another airline which some of you may  
22 recognize, but the original name was Allegheny Airlines and I  
23 was based out of Atlantic City, New Jersey.

24 Q. Was Allegheny an airline that carried passengers?

25 A. It was.

1 Q. What year did you join them?

2 A. 1986.

3 Q. And were you, was it a plane that you had two pilots,  
4 was there a third officer?

5 A. It what it was a two-pilot aircraft. They had two types  
6 of aircraft, one was called a DeHaviland-6. And the other  
7 was a DeHaviland-7. The only difference was, one had two  
8 engines, one had four engines but the number of people, what  
9 it would hold, and both planes had a captain and a co-pilot.

10 THE COURT: The 6 is still flying.

11 A. Both are.

12 THE COURT: They use them out in the Caribbean. I  
13 think I flew a 6 just about a month ago.

14 A. They do. There is a lay over we have at American  
15 Airlines where they have one on pontoons up by Anchorage.  
16 It is still in existence today.

17 THE COURT: I thought so.

18 Q. You were with Allegheny?

19 A. I was.

20 Q. Is that the Allegheny of the Allegheny Mohawk we have  
21 been hearing so much about?

22 A. Not really. It was Allegheny airlines, it is hard to  
23 explain, but it was a name for an airline and it had a number  
24 of smaller airlines, Pocono airlines, Southern Jersey  
25 Airways, Suburban Airways, we were all Allegheny. We were

1 the first original Allegheny. We were based out of Atlantic  
2 City, servicing Philadelphia was the biggest hub we had,  
3 Trenton, New Jersey, Kennedy, LaGuardia, Islip, Atlantic  
4 City, Cape May, New Jersey, Baltimore and Washington.

5 Q. Did there come a time in your airline pilot career where  
6 you became employed by TWA?

7 A. I did. I was, I had applied to TWA during the summer  
8 months of 1988. Actually, I received a phone call from a  
9 friend who just had gotten hired there and informed me that  
10 they were on the up swing of a hiring wave, and he actually  
11 mailed me an application, and I filled it filled it out and  
12 within weeks later I was there for an interview.

13 Q. And you got hired then?

14 A. I got hired.

15 Q. When was that?

16 A. My date of hire was September 30, 1988.

17 Q. September 30, 1988?

18 A. '88.

19 Q. So at the time of the merger and everything we are  
20 talking about here, you had twelve, twelve and a half years  
21 of experience?

22 A. That's correct.

23 Q. And what kind of position did you have with the airline  
24 when you first started out?

25 A. When I was hired by TWA there were choices to be had.

1 Being from New York, I chose to stay in New York. I think I  
2 am the epitome of the shirt, "I love New York" but being  
3 from New York, they offered me Kennedy or St. Louis, I chose  
4 Kennedy.

5 Once I picked a domicile they offered me 747 flight  
6 engineers and Lockheed 1011 flight engineer. I chose  
7 Lockheed 1011.

8 Q. The flight engineer, tell the jury what the flight  
9 engineers job is on the plane?

10 A. Flight engineers, unlike today's aircraft, they were,  
11 back then they were actually at one point they were airlines  
12 with four pilots. These were three places. Pilots.  
13 Specific duties. Captain, first officer, flight engineer.  
14 Flight engineers duties were primarily the pre flight of the  
15 airplane, to make sure the airplane was safe to fly, if there  
16 were any maintenance issues.

17 Some of them could be started with the flight  
18 engineer, but ultimately the captain had to make the final  
19 decision. Because of modern technology, a lot of things that  
20 today I would say would have been on my panel, like air  
21 conditioning, heating, hydraulics, fuel systems, those were  
22 all the responsibilities of the flight engineer. Today again  
23 modern technology has allowed that entire panel to be  
24 computerized and most of it today on the airplanes are on an  
25 overhead panel where either the captain or the first officer

1 can manage those systems.

2 But the brief description is we were the managers  
3 of all the technical systems on the airplane.

4 Q. All right. Now, I would like to ask you about how you  
5 got involved, did you get involved with ALPA, Air Line Pilots  
6 Association matters?

7 A. I got involved with the Air Line Pilots Association  
8 fairly quickly.

9 Q. All right. And how did you become involved -- before I  
10 ask you that. When you are hired by the airline are you, is  
11 there a probationary period?

12 A. There is. One year.

13 Q. All right. And during the probationary period do you  
14 have more say and less protection than a full-time employee?

15 A. It would be safe to say, for most airlines, new hire  
16 pilot has less protections. I think the word probationary  
17 stands for itself, but specifically at TWA, you were  
18 technically not afforded union protections in your first  
19 twelve months with TWA.

20 Q. All right. So you are a first year probationary pilot.  
21 The second officer, flight engineer on a Lockheed 1011?

22 A. Correct.

23 Q. Can you tell the jury how you, specific, the  
24 circumstances that led to you becoming involved in union  
25 matters?

1 A. I can tell them that as long as you know that is not a  
2 short answer.

3 Q. Don't make it as long as you can. As short as you can,  
4 tell the story.

5 A. I was hired in September. I can tell you the date was  
6 exactly two days prior to Thanksgiving. I was coming back on  
7 a Lockheed 1011 from London. During the flight back from  
8 London I perceived there was a problem with the airplane.

9 What I perceived and relayed to the captain and first officer  
10 was that this airplane had developed some kind of a gas leak.

11 Part of my job, and I am not trying to be  
12 technical, but just so you have a background, most airplanes,  
13 the fuel is kept in the wings of the airplane, and it is,  
14 bigger airplane, 747, Lockheed, it is a tremendous amount of  
15 fuel, 60, 70, 80,000 pounds of fuel and the remaining fuel is  
16 kept in the center tanks of the airplane. When you take off  
17 the procedure, even still today, is you burn your fuel out of  
18 the center first to keep the airplane laterally stable, and  
19 then when that fuel is exhausted you start drawing from the  
20 wings.

21 I think you can gather that if you sucked all the  
22 gas out of one wing or most of it without the other, the  
23 plane would start almost tipping like a ship and I am just  
24 trying to make it as generic as possible for you. I had just  
25 balanced the fuel load in this airplane before I decided to

1 go back and take a break.

2           When I returned, I noticed the plane was  
3 considerably unbalanced and that concerned me so a discussion  
4 began with the three of us. And it was decided fairly  
5 quickly that, let's get out what they called and referred to  
6 the FIRM, F I R M, Manual, and in simplest terms, what it is,  
7 it is a big fat binder that airplanes in those days had, and  
8 it was somewhat of a guidance manual, things are going to  
9 happen on airplanes and back then of course and even today we  
10 don't have ground communication, so especially over the  
11 Atlantic Ocean, so it is an a book to go to and say oh, if  
12 you have this problem, here are some steps you can take to  
13 either fix the problem or not fix the problem, how to best  
14 proceed.

15           So we read the Firm Manual on this fuel leak. And  
16 in simplest terms, what the Firm Manual directed the pilots  
17 to do was to turn off that engine, in this case, it was  
18 number 3, to turn off the number 3 engine, and isolate that  
19 fuel tank, we had, I had on my panel buttons that I could  
20 push to literally, like a plumber, close the valve, and  
21 isolate the fuel on that side of the airplane.

22           So the captain, after reviewing that with me, said,  
23 I don't want to do that because the first thing that would  
24 happen is the airplane could not fly at the same altitude on  
25 two engines that it could on three. And when you are over



1 the Atlantic Ocean, I am not trying to get technical with  
2 you, you are in a non-radar environment and you are really  
3 not talking to anybody and it is the middle of the night and  
4 if you can't stay where you are, you have to descend, there  
5 is a very specific procedure to do that. That procedure is  
6 to take your airplane and turn it 90 degrees off course and  
7 go ten miles, and then you may start your descent.

8           The purpose for that is there are airplanes going  
9 between, shall we say, the United States and Europe, we are  
10 all traveling on the same highway between the two  
11 destinations. We are just at different altitudes, so if we  
12 were to just arbitrarily go down and we can't talk to anybody  
13 it is highly possible we might be descending on top of  
14 another airplane. That is why they put this procedure in.

15           The captain did not wish to do this procedure. He  
16 had a concern about doing it. He had a concern about where  
17 we were which was the middle of the Atlantic Ocean, and so he  
18 chose to ignore it. And the second thing that was decided  
19 was whether indeed we were losing fuel.

20           These airplanes sometimes have had issues where the  
21 gauges stick. They have gone to full, they have gone to  
22 empty, and I agreed with him. I just told him I never saw  
23 one continue to go down like this.

24           So we are professionals and we came to, shall we  
25 say, an agreement, that was the following: I said to Captain

1 Reilly, let's do the following: Instead of following the  
2 book procedure, let's burn all the gas out of the number 3  
3 engine. There is a way I can do that on my panel. And when  
4 it gets near zero we will go what we call tank to engine,  
5 number 1 engine will take gas from the number one tank,  
6 number 2 engines from the number 2 tank, number 3 engines  
7 from the number 3 tank. If the number 3 gauge reads zero and  
8 the number 3 engines stops working I win, you lose. If it  
9 is, if it reads zero and the engine keeps running obviously  
10 it is a bad gauge, you win, I lose, but just by tracking the  
11 fuel and the time I can get the plane all balanced out well  
12 before we make landing at Kennedy.

13 He bought the argument. We did it. When the  
14 number 3 engine gas gauge read zero, the number 3 engine  
15 quit, and we were out of gas on that side of the airplane.  
16 The only good news about doing this was we gained about 200  
17 miles close to the coast of the Canadian border as opposed to  
18 being over the middle of the Atlantic Ocean.

19 Another thing that you have to know is planes as  
20 they descend they burn more fuel, not in the descent but  
21 traveling at 20,000 feet or 35,000 feet you will burn a lot  
22 less gas, just like you burn less gas at 55 as opposed to 85.

23 So long story short is that we ended up getting to  
24 radio communication with a center called Monkton Center which  
25 is off the Newfoundland Coast and we were talking to our

1 company, and it had been decided because we don't have  
2 enough, we didn't even know if we had enough gas to make  
3 land. But we were to supposed to try for St. John's  
4 Newfoundland. We headed for St. John's Newfoundland. Air  
5 Canada has a base, they will help us, they will get us a  
6 jetway, so on and so forth.

7 We proceeded to St. John's Newfoundland  
8 unfortunately we made an attempt to land at St. John's  
9 Newfoundland, but the coast was completely fogged in. And I  
10 am telling you, I couldn't make this up. I thought we were  
11 in training but we couldn't see a thing. All I know is at  
12 some point we ended up not landing and what they call the go-  
13 around procedure, we brought up the wheels and started to  
14 head back up because we couldn't see the airport.

15 All I know, wherever we were going to, it wasn't  
16 going to be very, very far with all the gas gauges reading  
17 zero. The captain had a military background and remembered  
18 on the opposite side of island there was an old military base  
19 called Stevensville, and it was not far, it was like ten, 15  
20 miles on the other side of the island.

21 It was funny, one side of the island was severe  
22 clear, the other side was fogged in. We basically glided to  
23 Stevensville and landed there two days before Thanksgiving  
24 and it was calculated some time after that we had about four  
25 minutes of fuel left on the airplane.

1 Q. Did you receive any honors from TWA as a result of this  
2 particular flight which was what, your second month with the  
3 airline?

4 A. That's correct. I did not know about this as new hire,  
5 but some time after the first of the year I received first a  
6 phone call and then a package in the mail, that I was TWA's  
7 flight crew member of the year, for my inventive procedures  
8 to get this airplane to a safe airport with enough fuel with  
9 some 250 or 260 people on board.

10 Q. Were you invited to a dinner or anything like that as a  
11 result of being the crew man of the year?

12 A. That is correct. I did not know what it was about. It  
13 was new to me.

14 I understood in the past it was actually even more  
15 elaborate, like held in London and Paris. I was given some  
16 paperwork to fill out that myself and a guest would be  
17 attending a dinner, this dinner was at the Waldorf Astoria in  
18 New York City.

19 I would be provided with first class air fare to  
20 get there. I would be provided an allowance to rent a  
21 tuxedo, it was a black tie affair. Basically I was supposed  
22 to be at a very elaborate affair and with more good things to  
23 come. But in my conversation with this young lady from  
24 Kansas city, I told her that I actually recently just  
25 purchased my first apartment as a young man and I lived in a

1 place at the time called Mount Kisco, New York.

2 Q. What was Mount Kisco New York to TWA?

3 A. That is where the story gets funny at the. Mount Kisco,  
4 when Mr. Icahn, when he bought the airlines, they, TWA's  
5 corporate headquarters were located at 605 10th Avenue for  
6 many, many years. He happened to live I believe up In  
7 Bedford Hills, the home address. He was in the final phases  
8 of building the three structures that was to be TWA's new  
9 headquarters. There were three buildings,, some of the  
10 property was rented out. But that was going to be TWA new  
11 corporate headquarters.

12 Q. What city was those in?

13 A. Those were in Mount Kisco, New York. So therein lies  
14 the punchline of the story.

15 However, I gave this young lady all my information  
16 and she said, well, we will send you a limo. We will take  
17 care of you and all these provisions were made for me.

18 Come the time of the dinner, I did all what I was  
19 instructed to do. I rented a tuxedo, the limo came for  
20 myself and at the time a young lady friend, I was dating, and  
21 we went down to the Waldorf Astoria to attend this fancy  
22 dinner.

23 Q. What table did you find yourself at?

24 A. Well, when we first got there we found that there was a  
25 message that I was to come down earlier, prior to the dinner,

1 and a gentleman by the name of Kent Scott who was the then  
2 TWA MEC master chairman, Mr. Kent Scott was to pick me up at  
3 an earlier time, and I was to be escorted to the Harvard Club  
4 for a private cocktail hour with Mr. And Mrs. Carl Icahn.

5 Q. Let's get to the dinner and the events that led to your  
6 involvement with the union?

7 A. Okay. So we go to the cocktail hour, we come back to  
8 the dinner. When I got there, I don't in how, two young  
9 ladies' that were, you know, escorting everybody to their  
10 table, and when I told them who I was, they said that you are  
11 at table number 1. Table number 1.

12 So I get to table number 1. And everybody was, the  
13 table was complete with the exception of two seats. And  
14 everybody stood up when I arrived, and it was some cheering  
15 and applauding and some very nice compliments, and they all  
16 introduced themselves to me. And although I may not remember  
17 each and every one of them, I can remember just about all of  
18 them.

19 They stood up and they said, I am Captain Rich  
20 Roberts, and this is my wife. And I am Captain Whelan  
21 Johnson, this is my wife. I am Captain Ron Reynolds, this is  
22 my wife. I am Bill Hoar, this is my wife, Captain Kopecks,  
23 this is my wife. They all introduced themselves as captains.  
24 I figured, these are my fellow pilots and these are their  
25 wives and we enjoyed a very nice dinner but the conversation

1 at the dinner was the interesting part. They kept asking me  
2 about what it was like to and new hire at TWA and what I felt  
3 about the airline and they knew I was in a private meeting  
4 with Mr. Icahn and my thoughts on Mr. Icahn. As today, I  
5 told them the truth.

6 And the truth may not have been too pleasant for  
7 them to hear, there was a number of disgruntled employees, I  
8 didn't think very highly of Mr. Icahn. I thought his wife  
9 was lovely, but there were a lot of problems out on the line,  
10 there were a lot of upset pilots and they asked me some very  
11 specific questions and I give them the honest truth.

12 Q. Thinking they are all pilots, captains, pilots like you?

13 A. I thought they were all captains, just like me. The  
14 dinner proceeded. It was very nice. It ended abruptly with  
15 a speech from Mr. Icahn and, after, almost after the speech  
16 say, 75 percent of the people at the dinner left. Before I  
17 left there they gave me gifts, I got a gold ring, a clock, a  
18 check for \$500. I got time off. I got all these lovely  
19 gifts.

20 When I returned to work there was a letter in my  
21 mailbox that I should see the chief pilot, Captain Wally  
22 Moran. M O R A N. I went to see Captain Moran, and he  
23 politely closed the door and asked me to sit down, and  
24 apparently he had gotten some reports from the people that  
25 were at my table about some of the stories that were told.

1 And he wanted specific --

2 Q. The people at your table, were they TWA management?

3 A. I later found out that my table, although they were  
4 captains, were all the highest of vice presidents at our  
5 airline. It was the vice president of training, the vice  
6 president of the pilots -- they were all high up management  
7 people.

8 Q. So what did the chief pilot say to you?

9 A. Told me that if I did not give him specific and more  
10 detailed information as to my conversations at the dinner,  
11 that I was going to be suspended and he was going to  
12 recommend my termination.

13 Q. So what did you do next?

14 A. At the present time I froze. I tried to just backtrack  
15 and say I think they misunderstood some of the things that  
16 were being said, and you know, there were some inaccuracies,  
17 but he just told me that he just wanted me to take the time,  
18 this was his quote, paraphrasing as best, that he was giving  
19 me 24 hours to write down the details of who was doing what,  
20 and some of these circumstances, and if I didn't produce  
21 them, that I would be terminated.

22 And so one day I am being honored and very shortly  
23 after I am being fired. I left --

24 Q. Where does ALPA come into the story?

25 A. I left hanger 12 with a long face and I was talking to



1 some of my friends when I got home, and it was suggested that  
2 I call this gentleman named Tom Brown. Tom Brown was a  
3 local New York union rep. And I did call Tom Brown. And he  
4 was extremely outraged at what I had told him. And he said  
5 he would pick me up the next day and he would be driving down  
6 to see captain Moran together. And he did just that. And I  
7 sat there with my hands twiddling a way nervous, and Mr.  
8 Brown, in simplest terms, took care of the entire situation  
9 with the how dare you intimidate these people, and you know,  
10 I think there was something, TWA contract that again because  
11 cell phones weren't, I don't think we had cell phones back  
12 then, it said something to the effect that if we are not home  
13 we have to leave a contact number as to where we would be or  
14 the addresses where we would be.

15 And Tom said I am telling you right now, I am going  
16 to CDS, NBC, ABC, the Post, the Times, and all of a sudden  
17 my problems disappeared. I thanked Tom Brown profoundly for  
18 his help and I asked him how I could return the favor. What  
19 he said to me is this is a very common thing that management  
20 is always looking to bully pilots, or try to step on them,  
21 and what you could do for me is when you get off probation,  
22 he says call me up and we will get to you work for the union  
23 and maybe one day maybe you can help somebody. That is d  
24 you how it all started.

25 Q. And did you?

1 A. I did.

2 Q. By the way, were you also the TWA pilot of the year  
3 another year?

4 A. The very next year.

5 Q. You were TWA pilot of the year two years in a row?

6 A. Correct.

7 Q. Anyone else in the 75 year history of the airline of a  
8 year more than once?

9 A. I was told by a captain, Captain Urashell, in the 75-  
10 year history at that time no employee had ever received that  
11 award two years in a row.

12 Q. Let's talk about your first volunteer work with ALPA, as  
13 a volunteer in the union.

14 A. When I called Mr. Brown, which I kept my promise, you  
15 know, he took my call and he talked about things and I guess  
16 maybe he just wanted it in his opinion to start me out with  
17 something relatively easy and he made some phone calls and I  
18 got put on what they called their membership committee which  
19 is basically working with I think new hire pilots and talking  
20 to them about the union.

21 Q. How long did you serve the membership committee?

22 A. I couldn't give you an exact date but a couple of years.

23 Q. What was the next thing you did within the union,  
24 volunteer work you did for the union?

25 A. Well, while working for ALPA I took a specific interest

1 in grievances. I thought that was the fun place to be. It  
2 is a position where literally an airline pilot can go into a  
3 management office and wear his union hat or her union hat and  
4 have a healthy debate or argument with your boss. But you  
5 kind of have this shield that you can say and do anything  
6 because you are just representing the pilots, after the  
7 meeting is all over you put your TWA hat back on and we are  
8 all friends again. So I liked that. That was, maybe that is  
9 as close as I could go to a lawyer that I could possibly be.  
10 I don't know. But that had an a track --

11 THE COURT: And you consider that a good thing?

12 THE WITNESS: Despite all the jokes, your Honor, I  
13 got to tell you.

14 THE COURT: Just checking.

15 A. I thought that was a good thing. I really did. I  
16 thought it was fun. I am sure making arguments are fun. I  
17 get to make arguments on s behalf of pilots and Tom Brown  
18 introduced me to somebody at the time who was in grievances,  
19 and they switched me from the membership committee to a  
20 grievance committee and once that was officially done, I am  
21 not sure what union paperwork happened, but I got an  
22 invitation to come down to Herndon, I got to tour the place  
23 and meet some of their attorneys. There was actually some  
24 very good education that I got out of that.

25 Q. You got some training?

1 A. I got some training.

2 Q. Do you recall what years you were on the grievance  
3 committee, when did you join it?

4 A. Again, it is so long ago, but I am going to say I got on  
5 the grievance committee in the mid nineties, maybe the late,  
6 a like '94, '95, something around that timeframe.

7 Q. Did you ever run for elective office?

8 A. I did.

9 Q. What was the, we heard testimony about how TWA was  
10 divided into three councils, Council 2 in New York, 3 in  
11 Saint Louis and 4 in Los Angeles. Were you in Council 2?

12 A. I was in Council 2, which was New York.

13 Q. What office was the first office you ran for?

14 A. First officer representative.

15 Q. You were at that point the co-pilot or first officer  
16 level?

17 A. I was a co-pilot. I made co-pilot, I made co-pilot back  
18 in 1989. A year after I was hired. There was a, I am not  
19 sure, an eruption in New York back in 1998, where the New  
20 York captain rep, the New York co-pilot rep, and I believe  
21 the New York flight engineer rep, were the technical term was  
22 recalled, simplest terms, thrown out. The situation behind  
23 that had to do with putting an attorney on the TWA board.  
24 Contract 98 got the TWA pilots and the flight attendants and  
25 the mechanics a seat on the board of directors. I guess, and

1 this was, I was not present at this meeting, but the  
2 direction from the pilots to their union reps were to put a  
3 pilot on the board. At a MEC meeting, it was later decided  
4 to put an attorney on the board to represent the pilots'  
5 interests.

6 Q. Do you remember the name of that attorney?

7 A. I believe the attorney was Steve Tumblin.

8 Q. Who we have seen her on the video?

9 A. I was not here for that.

10 Q. So there was a recall vote of all the elected officers?

11 A. Correct. The elected officers were recalled. And soon  
12 thereafter, of course there was a -- New York had nobody, and  
13 there was campaign cards and balloting cards were issued in  
14 the mail, because everything was done by the mail, and  
15 Captain Tom Kennedy was elected the captain rep. I was  
16 elected the first officer rep. And I believe Ted Case was  
17 elected the Secretary Treasurer at that time.

18 Q. All right.

19 THE COURT: Non-voting position, right, on the MEC?

20 THE WITNESS: That is correct. I can't remember  
21 when, your Honor, but there came a time where that position  
22 changed from a voting to a nonvoting, but when Ted was  
23 elected, I believe it was a nonvoting position.

24 Q. All right. And do you recall when you were elected the  
25 first officer rep for Council 2?

1 A. That would was the year, 1998.

2 Q. So right after that contract?

3 A. Right after that contract was put in place.

4 Q. Did you, was there then another opening within the local  
5 council that you ran for subsequent subsequently?

6 A. That is true. Very quickly after I was put in as the  
7 first officer rep I was honored to get my captain's stripes  
8 with TWA and I became a captain.

9 Even though I became a captain I could still serve  
10 in the first officer rep position because I was elected  
11 there. I became a captain, and then I am going to say three  
12 to four months after I became a captain, Captain Kennedy, who  
13 was the Council 2 captain rep, had turned 60 and retired and  
14 when he turned 60 and retired that seat became vacant and you  
15 had to have another election and I ran for that seat because  
16 I was now a captain. And so I was, the election ballots went  
17 out and I was dubbed the winner and now I was the Council 2  
18 captain rep.

19 Q. All right. And did you remain the Council 2 captain rep  
20 up until the point where Council 2 was closed?

21 A. I was.

22 Q. All right. Also each of the local councils also had  
23 some nonvoting positions, chairman and vice chairman and  
24 secretary treasurer. Do you recall that?

25 A. I do.

1 Q. Did you serve any of those positions at the same time  
2 that you were the captain rep?

3 A. I was also the local council chairman.

4 Q. So you were chairman for the New York body of TWA  
5 pilots?

6 A. Correct.

7 Q. Do you recall when you were elected the chairman of the  
8 LEC?

9 A. I do not recall the day because what happened after I  
10 became the captain rep, now my seat became vacant. So we had  
11 to have an an election to replace me as a first officer rep.

12 I believe that seat was later filled by a pilot by  
13 the name of David Singer. And then once David Singer was  
14 seated as a first officer rep, another ballot went out in the  
15 mail as to who would would be the chairman of Council 2. So  
16 I can only say that the process of the balloting, and the  
17 process of the election takes four to six weeks to happen.  
18 So if I had to give you a fairly good guess, I would say  
19 somewhere within two to three months after seated as a  
20 captain rep.

21 Q. Were you chairman of Council 2 before the American  
22 airline TWA transaction was announced?

23 A. Yes.

24 Q. Then you were, throughout that entire process that we  
25 have heard a lot of testimony you were both the captain

1 officer and chairman of Council 2?

2 A. That's correct.

3 Q. What is your view as an elected rep of the LEC for TWA,  
4 what was your view of your s job, what you are responsible  
5 was as the captain rep?

6 A. I can't describe it in one word. But basically, I was,  
7 the best way I can describe it to the jury is I felt like the  
8 leader of a New York family.

9 If a New York pilot had a problem I expected  
10 him to call me. If I found out about a problem I would call  
11 him or her. Any time someone in trouble could be, personal  
12 problems, family issues, banging up airplanes, getting in  
13 trouble with the FAA, I mean if it happened anything like  
14 that, they were either expected to call their local council,  
15 of which I was in charge of, or if I found out first I would  
16 call them.

17 In addition to that, we would have scheduled  
18 meetings and at these meetings we would discuss problems with  
19 the airline. We were also problem solvers, or we tried to be  
20 and we did a relatively good job of the it and the last thing  
21 I thought the LEC reps were supposed to do is if the New York  
22 pilots wanted strawberry sundaes on the airplane it was my  
23 job to let the MEC know we wanted strawberry sundaes on the  
24 airplane.

25 We carried their wishes to the heirarchy and



1 hopefully resolved a lot of issues.

2 Q. Were there times from time to time where you had to vote  
3 on various matters?

4 A. On the LEC levels or the MEC levels?

5 Q. Let's talk about the MEC level? Over all.

6 A. Well, yeah. Very few votes ever took place on the LEC  
7 level.

8 If the pilots wanted something specifically done,  
9 the way it would work is they would put forth a resolution,  
10 the group in attendance would discuss it, debate it and after  
11 the debate and discussion, it would be seconded and if it was  
12 seconded, it would be voted on.

13 And if it passed, basically the New York pilots are  
14 telling their captain rep, FO rep and flight engineer rep,  
15 this is what they would like us to do on their behalf, and we  
16 would take it to the MEC level and present almost that  
17 identical resolution to the MEC level hoping to persuade  
18 Council 2 and Council 3 to see it the same way, and if it was  
19 adopted, then the master chairman and vice chairman and  
20 secretary treasurer of the MEC would have to go forth with  
21 our wishes.

22 And we did have some what we call internal issues.  
23 Sometimes there was fighting over flight time, should this  
24 trip belong to the New York pilots or this trip to the west  
25 coast pilots. That was what I call fun fighting. We had

1 issues, but all the voting was basically done on the MEC  
2 level.

3 Q. At the MEC level did you have a philosophy about how you  
4 were supposed to vote your votes?

5 A. Yes, my philosophy was very simple. I was there to  
6 carry out the wishes of my New York constituents.

7 Q. Did you try to do that in all your votes?

8 A. I did.

9 Q. How did you first learn about the proposed transaction  
10 with with American Airlines?

11 A. I believe my first indication was a phone call,  
12 definitely a phone call, but I recall it being from Bob  
13 Pastore, our master chairman, to tell me there was going to  
14 be an imminent announcement, within a day or two, about  
15 American Airlines wanting to acquire TWA.

16 Q. Bob Pastore's name has been mentioned. You talked  
17 earlier about how the pilots had a vote on the board of  
18 directors of TWA?

19 A. Correct.

20 Q. And there was a lawyer, Steve Tumblin, who had that  
21 position?

22 A. Correct.

23 Q. Was he replaced at some point?

24 A. He was. He was later replaced.

25 THE COURT: Later when?

1 A. I couldn't recall, your Honor, but if you are asking for  
2 a best estimate, it would be probably in 1999.

3 Q. All right. And who was he replaced by?

4 A. I can't remember if Bob -- I can't remember if Bob  
5 Pastore was the first one or the second one at the present  
6 time, who was put on the board of directors. I really can't  
7 recall.

8 Q. All right.

9 THE COURT: At the time of the American  
10 acquisition.

11 A. At the time of the American acquisition Bob Pastore was  
12 the pilot union rep on the board of directors for TWA.

13 THE COURT: Mr. Jacobson, it is exactly two. Is  
14 this a convenient time?

15 MR. JACOBSON: Any time is convenient, your Honor.

16 THE COURT: All right. I think we will finish for  
17 today.

18 Do not discuss the case among yourselves or with  
19 your family, friends, or loved ones. Keep an open mind until  
20 you hear all the evidence.

21 Most important, have a safe trip home, safe trip in  
22 tomorrow morning and I will see you tomorrow morning.

23 (The jury leaves the courtroom.)

24 THE COURT: There was reference made by Mr. Katz  
25 early this morning, about ten after eight, to future video

1 depositions and the question was A, objections, and then B,  
2 motions for additional read-ins.

3 MR. KATZ: Yes, your Honor.

4 THE COURT: I haven't gotten anything.

5 MR. KATZ: I have with me the deposition  
6 transcripts for Randy Babbitt, Duane Woerth, Tom Rachsford  
7 and John Clark.

8 THE COURT: Do you have some kind of index, that  
9 tells me A , what is objected to, and B, what you want  
10 added?

11 MR. KATZ: These are color coded.

12 Brackets show plaintiff's designation.

13 The yellow is ALPA objections.

14 Orange is the counter designation.

15 And green are additions for completeness. So that  
16 you can follow along.

17 THE COURT: Yes. That is a breeze.

18 MR. PRESS: I am color blind.

19 THE COURT: Let me have those. Do we have an order  
20 so I can take them up in order?

21 MS. RODRIGUEZ: Mr. Hollander, we have to finish  
22 with him. Tomorrow will be Mr. Hollander and Mr. Clark.

23 THE COURT: Who is next after Mr. Hollander.

24 MR. PRESS: Sean Clarke.

25 THE COURT: Live?

1 MS. RODRIGUEZ: Live.

2 THE COURT: Okay. Then --

3 MR. PRESS: Probably some of those depositions.

4 THE COURT: In what order? I want to take them up  
5 in order.

6 MR. PRESS: Okay. Rachsford.

7 THE COURT: Say that again.

8 MR. PRESS: Tom Rachsford.

9 THE COURT: Spell it.

10 MR. PRESS: R A C H F O R D.

11 THE COURT: Yes.

12 MR. PRESS: Randy Babbitt. Jay Randolph Babbitt.

13 And then Duane Woerth.

14 THE COURT: Duane Woerth. That all won't happen  
15 tomorrow.

16 THE COURT: No, I am just scheduling, to make sure  
17 I get it done when it has to be ready.

18 MR. KATZ: John Clark is after that.

19 MR. PRESS: Yes. Mr. Fram, do you know how long,  
20 or what do you expect as far as cross of Mr. Hollander goes?

21 MR. FRAM: Hard to say, an hour or two. Hopefully  
22 the responses on cross will be a little shorter.

23 THE COURT: Yes. When you are cross examination, I  
24 balancing balancing fuel tanks on a jet liner. It will be  
25 very precise.

1 MR. PRESS: Our next live witness traveled from St.  
2 Louis today to testify tomorrow and he has to be back in St.  
3 Louis tomorrow. I am concerned that the testimony of  
4 Hollander might prevent that. Would it be okay if we took  
5 Mr. Clark out of order before the cross examination.

6 THE COURT: You are the one who is --

7 MR. FRAM: There is no objection to that.

8 THE COURT: I can't imagine why there would be an  
9 objection. You are the one presenting your case.

10 MR. PRESS: Okay.

11 MS. RODRIGUEZ: Mr. Hollander would sandwich Mr.  
12 Clark.

13 THE COURT: I understand that. You want to do that  
14 first thing, Mr. Clark first?

15 MR. PRESS: We will see. No, I don't want to do it  
16 first.

17 THE COURT: You want to stop and make sure you  
18 leave enough time to finish Clark.

19 MR. PRESS: Correct.

20 THE COURT: That is okay with me. There is no  
21 objection from Mr. Fram..

22 MR. FRAM: We will accommodate any travel issues  
23 that the witnesses have?

24 THE COURT: Okay.

25 THE COURT: Who is the name of the witness flying

1 in?

2 MR. PRESS: Sean Clarke.

3 THE COURT: Sean?

4 MR. PRESS: Sean Clarke.

5 THE COURT: That is not John?

6 MR. PRESS: No, John Clark.

7 THE COURT: Sean Clarke.

8 MR. PRESS: Okay.

9 THE COURT: Very good. I will see you all tomorrow  
10 morning.

11 Again, try to get here just so in case something  
12 pops up about 8:10 so if there are legal issues I can take  
13 care of.

14 THE COURT: I don't like to eat into the jury time.  
15 Although we, I probably should alert you that nine o'clock  
16 there is going to be a fire drill. And you are going to have  
17 to leave the building. I am going to have to leave the  
18 building.

19 And so about I would say 45 minutes of our time is  
20 going to be robbed from us.

21 MR. JACOBSON: I think our audience is experienced  
22 in fire alarms.

23 THE COURT: I will give them all A's. The timing  
24 point of view, I just want you to be aware that we are going  
25 to lose 45 minutes. Hollander begins, at 8:30 or 9, we will

1 be out of the building for 45 minutes.

2 MR. FRAM: Thank you, your Honor.

3 THE COURT: See you then.

4 (Adjourned at 2:00 p.m.)

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I N D E X:

HOWARD HOLLANDER, SWORN.

DIRECT EXAMINATION

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